IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 230 of 2006
In
OFFICIAL LIQUDATOR REPORT No. 29 of 2005
In
COMPANY PETITION No. 154 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOTAK MAHINDRA BANK LTD. - Applicant(s)
Versus
O.L OF VARUN SEACON LTD. & 3 - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MR SAMIR B BUNDELA for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2, 4,
MR HM BHAGAT for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/09/2006

ORAL JUDGMENT

1. By way of present Judge's Summons, the applicant - Kotak Mahindra Bank Limited has prayed for an

appropriate order permitting disbursement of the remaining amount from the sale proceeds from disposal of the assets of the company in liquidation to the applicant and other secured creditors in proportion of their entitlement.

2. The applicant claims to be the assignee of the debts due and payable by the company in liquidation to ICICI Bank Limited. It is the case of the applicant that approximately an amount of Rs.12,25,69,225/- was due and payable by the company in liquidation to ICICI Bank Limited. As per the application, the ICICI Bank Limited vide a deed of assignment dated 29.9.2004 has assigned the debt due to it from the company in liquidation in favour of the applicant. It is also contended on behalf of the applicant that the said ICICI Bank Limited assigned all its right, title and interest and benefits in respect of the claim against the company in liquidation together with the security interest therein in favour of the applicant who has agreed to take over the said

claim. It appears from the record that vide order dated 27.4.2005, this Court has been pleased to sanction sale of assets of lot No. II of the company in liquidation for a total consideration of Rs.14 Crores. That this Court passed an order in Company Application No.88/2006 permitting disbursement of Rs.10 Crores on ad-hoc basis in favour of the applicant, IDBI and SBI and this Court passed an order that on submitting necessary proof with regard to registration of their respective charge over the properties of the company in liquidation as required under the provisions of the Companies Act, the Official Liquidator was directed to pay an amount of Rs.10 Crores to the IDBI towards the claim of the IDBI as well as SBI and Kotak Mahindra Bank Limited (ICICI Bank Limited) within a period of one week and the IDBI in turn was directed to disburse the said amount amongst the secured creditors proportionately and accordingly the said amount of Rs.10 Crores was paid to the IDBI towards the claim of IDBI and SBI and ICICI Bank Limited

and thereafter, with regard to the balance amount, the present application has been filed.

3. It appears from the record that the LIC was also the secured creditor, however, at the time when the earlier order came to be passed, the claim of LIC was not considered. The learned advocates appearing on behalf of the secured creditors have no objection at this stage if the claim of the LIC is also considered as a secured creditor for the purpose of disbursement. It also appears from the record that approximately an amount of Rs.4 Crores is lying with the Official Liquidator which realized by selling the properties of the company in liquidation.

4. Shri Baiju Bhagat, learned advocate appearing on behalf of LIC & IDBI - lead institute has submitted that the secured creditors have determined the percentage ratio amongst themselves and as agreed by the secured creditors, it has been decided that 42.36% be paid to IDBI, 29.40% be paid to Kotak Mahindra

Bank Limited (ICICI Bank Limited), 8.80% be paid to LIC and 19.44% be paid to SBI.

5. The learned advocates appearing on behalf of the secured creditors have submitted that till the final percentage ratio is determined by the Chartered Accountant and the Official Liquidator, further amount of Rs.4 Crores be disbursed among the secured creditors on ad-hoc basis, on the basis of the aforesaid percentage ratio.

6. The Official Liquidator has submitted its report and has submitted that so far as the present application at the instance of Kotak Mahindra Bank Limited is concerned is not maintainable as the Kotak Mahindra Bank Limited cannot be considered to be the secured creditor of the company in liquidation. It is also further submitted that the applicant has not produced original duly registered deed of assignment of debts as primary evidence in support of its claim of having acquired the rights of ICICI

Bank Limited as secured creditor of company in liquidation. It is also further submitted that the applicant Kotak Mahindra Bank Limited has not filed any application for subrogation.

7. It is to be noted that the applicant has already submitted an appropriate application for substituting the name of ICICI Bank Limited and to consider Kotak Mahindra Bank Limited as a secured creditor in place of ICICI Bank Limited and the said application yet to be decided and disposed of. Under the circumstances, till the said application is heard and decided and disposed of and the claim of the Kotak Mahindra Bank Limited is considered as a secured creditor, the Official Liquidator is justified in making a grievance that as on today, the Kotak Mahindra Bank Limited cannot be considered to be the secured creditor. Without entering into the said dispute on merits at this stage and keeping the said question open, let an amount which is already lying with the Official Liquidator be disbursed amongst other secured

creditors and the amount payable to ICICI Bank Limited on the basis of the aforesaid ratio which is alleged to have been assigned to Kotak Mahindra Bank Limited be retained with the Official Liquidator and to be placed in a fixed deposit so that the same may be paid to the applicant, if ultimately the applicant succeeds in establishing that it has become the secured creditor in place of ICICI Bank Limited on the basis of the alleged deed of assignment. Under the circumstances and till the final percentage ratio is decided by the Chartered Accountant and the Official Liquidator, let an amount of Rs.2,08,00,000/- be disbursed on the basis of the aforesaid percentage ratio as decided by the secured creditors inter-se and out of which, Rs.66,85,229/- be paid to IDBI Bank Limited, Rs.64,06,036/- be paid to LIC and Rs.30,68,613/- be paid to the SBI by the Official Liquidator and the balance amount of Rs.46,40,122/- to be paid to ICICI Bank Limited/Kotak Mahindra Bank Limited be retained with the Official Liquidator in a separate Fixed Deposit and as and when the

applicant succeeds in establishing that it has become the secured creditor in place of ICICI Bank Limited, the said amount can be paid to the applicant. The aforesaid amount be paid to IDBI, LIC and SBI within a period of two weeks from today. The IDBI as well as other secured creditors i.e. SBI and LIC shall file an usual undertaking before this Court with a copy thereof to the Official Liquidator to the effect that if ultimately on working out the final percentage ratio, in case, if it is found that they were paid more amount than they are required to be paid, they will return and/or repay the same immediately. It will be open for the Official Liquidator to prematurely withdraw the fixed deposit receipts for making the aforesaid payment. After making the payment of the aforesaid amount, the balance of the total amount shall be kept by the Official Liquidator in fixed deposit receipt and orders to that effect will be passed after the final percentage ratio is fixed.

8. The Official Liquidator is directed to submit the report with regard to the final percentage ratio after getting the accounts/claims verified by the Chartered Accountant within a period of one month from today, failing which, an appropriate order will be passed against the Official Liquidator for non-compliance of the order passed by this Court and if there is any lapse on the part of the Chartered Accountant, the services of the Chartered Accountant can be discontinued. It is made clear that the aforesaid amount be disbursed on ad-hoc basis subject to the determination of the final percentage ratio.

9. This application is accordingly disposed of.

[M.R.SHAH, J.]

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